SOME THEORETICAL PROBLEMS OF THE INTERNAL REGULATIONS OF ENTERPRISES

by

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I. The actuality of the subject of regulations in the legal science

The survey of the theoretical problems of the internal regulations within the enterprises got into the foreground of the scientific research just in the last few years. It is mainly due to the formerly general view that the internal conditions should be regulated by legal rules primarily at the cooperatives. In the co-ops the owner is not separated from the propriety-organization as it is in the case of state enterprises. Followingly the shaping of the owner's will takes place *inside* the organization and this should happen on a legally settled way. Since this process has a legally fixed order *outside* the organization, the internal conditions hardly require to be legally regulated.[1] Therefore the attention was directed towards the collective agreement, we could seldom experience the independent, theoretical elaboration of the internal regulations. The authors dealt with them primarily in connection with other institutions of labour law — such as collective bargaining, right for instructions.[2]

As a result of the reaction to the challenge by the growing difficulties in the inner and outer economies the problem of modernizing the inner structure of enterprise came to the foreground. In the scientific literature dealing with labour law and the enterprises the increase of such surveys was indicated, which urged the theoretical shaping of the so-called "internal enterprisal law".

Now the need for clearing the theoretical problems of the internal regulations of the enterprises appeared with even more intensity. László Nagy (professor at Gödöllő University) in one of his books criticizes the lack of the theoretical elaboration of the enterprise level sources of law, the clearing of the relation to each other of these regulations and criticizes the science of labour law that it did not deal earlier with the organizational and operational regulation.[3]

The notion of the so-called "internal organizational law of enterprises" was adapted by Tamás Sárközy in the Hungarian legal literature. The creation of his comprehensive enterprisal law theory is connected with the changed role of the enterprises in our economic life, their widened variety in form and type, the decrease of the direct influence of the state

management organs, the increase of enterprisal independence and autonomy. The substance of his system of views is, that as a consequence of the development of economic direction system and that of the internal organization of enterprises and for the sake of the further development it is the time to create a separated, independent branch of law, that aims the uniform regulation of the internal and outer management relations of the enterprises and is separated from both the civil and administrative law, moreover from the labour law.[4]

Within this so-called internal organizational law would be regulated the establishment of the various internal organs of the enterprise, their composition, their basic operational forms, rights and duties, the main appearance forms of their relations.[5]

He directs the focus of his attention first of all on the outer vertical and horizontal relations of the enterprises (i.e. the relations with the organs of economic direction and other economic units) and on the internal legal relations between the trust centers and their enterprises. He relatively less elaborates the shaping of the so-called internal law and the details concerning internal regulations.

II. The sphere of legal regulations inside the enterprises

One of the most discussed question right at the start-point, whether exsists a sphere at all for the formal law provisions within the enterprise and what kind of provisions for?

Naturally the so-called work rules to secure the internal order of the enterprises existed even earlier within the socialist state enterprise and there were also rules concerning the safeguarding of employees' interests — mainly regarding the individual labour relation. (These types of rules, of course, could be found practically since the early beginnings of factory-production till our days also in countries of capitalist economic system, but now we do not go in details about these historical questions).

In the former our system of controlling economy by instructions, however, it was necessary and natural, that the central prescriptions were extended even to the smallest details of the internal organization and operation of enterprieses (e.g. the obligatory instruction to set up certain spheres of tasks, certain jobs) on one hand, the myth of the one-man responsibility of the enterprise director excluded every kind of legal settlement, working out of any legal technical solution on the other hand. The opinion according to that the state enterprise is the lowest level executive organ of the public administration — also produced its influence on the internal organization of state enterprises. (The remnants of this point of view can be found even today in the background of some opinions concerning the internal regulations.) Consequently the internal organization of state enterpises was virtually an extension of the public administration, it was an image reflected of the structural set-up of the ministries and other organs of state direction.

When changing the system of economic direction (i.e. the increasing independence of state enterprises), the State changed its expectations towards the enterprises of state property. Such a behavior is expected that aims the growing profit and flexibly adapts itself to the marked requirements, etc. All these has made necessary the change of the earlier structure of enterprises and at the same time the role of legal regulations came into the foreground.

Of course the role of the law cannot be interpreted on such a way as the change of the enterprisal organisation itself would be the task of the law, because this is economic and organizational task. However, the problem appears that on one hand to what estent can be prescribed the internal structure of state enterprises by central rules, and – on the other hand – to what extent can be fixed the organizational decisions and provisions by formal prescriptions within the enterprise. It is certainly true, that an organizational rule or provision does not turn into legal rule merely by the fact that it is formulated by lawyers. This would be an extreme idea, but it would be similarly extreme statement to say that the internal norms of enterpises are partly "social" rules being "merely technical" or only "informative" rules and this way virtually to exclude the law from the life of the enterprises.

All these aforesaid have particular importance from the view of labour law. Namely when any decision or provision appears as internal rule, the adherence to its content becomes legal obligation for the parties in the employment relation. Followingly it appears as *norm of legal character*, even if *it is not a legal rule* at the same time. (The regulations of social organizations are, naturally, exceptions, they are really pure social norms without any legal characteristic, since the observance of them and the responsibility for it, is not based on a prior legal relation.)

Some experts share the point of view that the settlement of the internal organizational relations in legal rules would make rigid and bureaucratic the internal life of the enterprise, binds too much the hands of the director, followingly hinders the emergence of the dynamic enterprisal leadership, that is able to react rapidly to the changes. Although these fears direct our attention onto a real danger, we should not agree with them unconditionally. The order of the production and organizational life requires, indeed, the exsistance of several rules. This is not overgrown bureaucreacy yet. It begins when instead of the common interests the offices' interests determines the content of rules and the process of deciding or settling cases.[6]

There were internal rules and various provisions formerly as well in the socialist enterprises. What is a new phenomenon, is the need for a settlement of the internal organization by legal rules with an obligatory character towards the enterprise manegement as well as the lower internal units and organs. First of all the problem of the independence of the enterprisal internal units caused heated debates. At first in the works of Tamás Sárközy was claimed, that we must give up the rigid exaggeration of the otherwise appropriate principle – namely that the enterprisal independence

cannot be mechanically transferred to the independence of the enterprisal units."[7]

Consequently one of the important tasks of the internal organizational law, proposed by him to be created, would be the regulation of the mutual relationship between the internal units and their relation to the company-center in such a way that internal units should gain greater independency. Their economic activity would be the less dependent on the work of other units as it is possible. and the results should be presented separately in the books of the enterprise. The creation of such a solution would make the stimulation of the employees more direct, consequently more effective. Despite of the evidently advantageous effects of this idea, we cannot say that it was accepted unanimously in the literature.[8]

At any rate the Act on State Enterprises (Act No. VI of 1977) imposed on enterprise directors that they are obliged to provide the establishment of the independent accounting system of the larger units of the enterprise in the regulation on organizational structure and operation.[9] Though the scientific discussions are not decided solely by the legal provision, the solutions based on it provided plenty of generally useful experiences for the theoreticians. (Naturally it ought to be mentioned that it is primarily a task for economics to ensure the conditions for the independent economy of internal units, to work out their independent accounting system and separated statements on production results. The lawyers' activity is merely to put these conditions into legal forms and provide them with guarantees.)

The development of the independence of the internal units in the enterprise is only one of the internal organisational problems, that requires legal regulation. The abovementioned organizational and operational regulation makes arrangements on further important problems as well (e.g. the legal status of the internal organs of the enterprise, the legal status of the director, his relation to his deputies, the legal status of the enterprise organs of social and political organizations, etc.)

III. Problems of legal branch classifications in connection with internal regulations of enterprises

The provisions in the structural and operational regulation, do not affect directly the individual labour relations. This fact stirred disputes in the literature concerning the legal branch classification of the different groups of internal regulations. The substance of the discussions is whether those rules belong mainly to the labour law or they belong just partly to the labour law, and partly to the new branch of law named "internal organizational law of enterprises". There is a third view, according to that labour law should be inserted into the enterprisal law, therefore it does not recognize labour regulations inside the state enterprise.[10]

Naturally this last opinion is just as extreme as another one, namely that "the whole internal life of the enterprise is of labour law character."[11] Inevitably the following statement can be interpreted as saying this extreme opinion: "When the internal rules are realized by the activity

of the members of the organization, who are subjects of employment relation, then these rules can be only employers' acts, followingly these are acts, regulating labour relations.[12]

However, I would put the emphasis on the word: "when", because I presume that those persons and groups of persons who make the production and economic activities of the enterprise, are in double role. Primarily they are employees, secondarily they are elements of the organization. This double role is explained on a very convincing way by László Román in connection with the role of the company director so as to separate the directions issued by the supervisory organs adressed to the director as an employee (employed by the supervisory organ) from those adressed to the enterprise as an economic unit, as organization.[13] It could happen that the two kinds of instructions arrives to the adressed person in one single act, we have, all the same, to distinguish theoretically between the instructions adressed to two kinds of adressees: one to the person as an employee, the other to the organisation (organisational unit).

According to my point of view the same distinction, even if merely theoretically, could be made at a lower rank of managers, or even in the case of employees, who perform the simplest type of activities. (It is true, that proceeding downstairs on the enterprisal hierarchy it is even more difficult to separate the purely employer's instructions from the "organizational instructions" addressed to an organizational "element".)

Therefore among the internal rules of the enterprise we really can distinguish between labour regulations and rules of other branch of law. Of course, there are regulations miscellaneously containing rules of labour law and rules belonging to other branch of law. Actually, such a rule is the structural and operational regulation of the enterprise, the regulation on innovations and the system of job descriptions.

All these do mean for me that it is unnecessary to overemphasize the importance of the branch classification of the rules inside the enterprise, because in several cases the same provision can be ranged into the territory of more than one legal branch. Due to the "miniaturization" of the living conditions, the problems of division appear more frequently than it is in the law "outside the enterprise" and in the meanwhile their importance is less. (Moreover so, because the employee is obliged to follow the provisions concerning his job regardless of its classification to a legal branch.)

The division of internal rules to labour law and non-labour rules – appeared first in the book of László Nagy (professor at Szeged University) Although several contrary opinions have been emerged, I consider it beyond any doubt that today there are many norms concerning to the organization and its operation the objects of which fall far from the conditions settled by labour law. At the same time I do not agree with his opinion, according to which some of the internal regulations are of "non-legal character". Really there are norms of counduct having no-legal character. As I have mentioned earlier, could be considered as non-legal, purely social norms those regulating the internal life of a social or political organization. (For example the basic rules of the trade unions, the youth organizations

or the party.) But when a provision regulates the rights and duties of persons who are engaged in employment relation, especially the rights and duties established *in accordance with the director of the enterprise* though by the enterprise level organ of trade union – it cannot be said to be purely social norm.[14]

The complex character of the internal relations in the enterprise lead to similar differences of opinions in the Soviet legal science as well.

In his book dealing with the local and central labour norms Kondratiev says that "on the basis that the labour activity of human beings takes always place among certain organizational forms, emerged in the labour law the point of view according to which the organizational (administrative) relations within the enterprises actually constitute integral part of the labour relations." Further on he refers to Alexandrov, Paskov and O. V. Szmirnov as outstanding legal scientists sharing this view. He quotes then Protsevsky from the authors having contrary opinion. Protsevsky writes, according to me properly, that the "organizational relations are closely connected with the labour relations, but they are not mixed with them and are not even components of the latter."[15]

I agree with this latter statement but we have to admit that the authors considering organizational relations as part of labour relations do not commit the mistake to consider every internal relation within the enterprise to be relation of labour law. This is proven by a statement by the formerly mentioned O. V. Smirnov who in his book on the "Internal work-order of enterprises" challenges the statement that the internal work-order of an enterprise would be the sum of the legal relations rising within the workers' collective in the course of performing the tasks of production. According to him that opinion "combines the internal work-order into a conglomerate of those relations regulated by public administration law, civil law and other branches of law". Due to this the internal work-order "leaves its branch identity" – says O. V. Smirnov. The term of the internal work-order should be narrowed down to the sphere of relations regulated by labour norms.[16]

In the Soviet literature it could be experienced that authors during the survey of the internal relations of the enterprise virtually without exception they arrive to the meaningless notion of the "internal work-order of the enterprise". It is not likely that it is some kind of subjective failure on the side of the researchers. It is much more obvious that it signs the difficulty of classification of the relations emerging in an enterprise. These difficulties may cause the fact that although the work-order has a quite large literature in socialist countries (primarily in the Soviet Union and the GDR), it cannot be stated that a uniform view would have appeared even as far as the term itself is concerned. The work-order is taken as a sum of legal rules, the form of legal order realized within the enterprise, the sum of legal relations and – as we have seen in the above examples – the sum of production relations within the enterprise, too.

It is interesting to compare it to the term "industrial relations" what is used in the West. It appears more and more frequently in the

literature dealing with the internal relations of the enterprises (first of all with the problems of labour and personnel administration) and seems to be also an obscure, uncleared notion. I even dare say that the content and sphere of the two terms (included conditions and institutions in them) are almost identical, except naturally those differences due to the difference between the two social order and the various historical and legal development traditions.

This opinion of mine is confirmed by the next quotation: "A system of industrial relations is a system of rules. ... the subject deals with certain regulated or institutionalised reationships in industry. Personal, or in the language of sociology, unstructured relationships have their importance for management and workers but they lie outside the scope of a system of industrial relations. The study of industrial relations may therefore be described as a study of the institutions of job regulation."[17]

IV. The relation between enterprise regulations and statutory laws

László Nagy (professor at Szeged University) states that there are three main differences between the labour regulations and the other kinds of regulations. The first one is that the base for the organizational rules is the State Enterprise Act, while the internal rules of labour law are based on the Labour Code. The second factor is to be found in the content and sphere of regulations. According to him the Enterprise Act gives authorization only for applying the law instead of establishing new rights and duties. The conditions of employment relation may be set up by internal rules only upon the authorization of a Labour Code provision. The third difference is in the possibility to enforce the provisions. The enforcement of the internal regulations of enterprises depends only on the authority of the director while state-provided enforcement can be used to have observed the labour regulations as in the case of any other laws.[18]

He uses these statements at the same time to support his theory according to which the labour regulations of the enterprises constitute the lowest level of the statutory legislation.[19]

He represents a group of views in the Hungarian legal science according to which the internal regulations (or some of them) are close to the statutory law and have similar legal character. Mrs. Ida Hágelmayer, for example, considers the collective bargainig of the enterprise as regulation, as a special kind of general acts, that is, in the terms of legal nature, close to the statutory rules.[20] Tamás Sárközy calls the regulation on organization and operation as "a special kind of legal sources. Though he calls it "social norm basing on statutory provisions" we have to connect him to the representatives of the above mentioned group of views on the ground of his arguments for legal source character. For example he states that it is just some "remnant of etatism" to consider legislation as monopoly of the State."[20]/a (I suppose that surveying the theoretical substance of his opinion it does not matter that he does not consider every kind of internal rules having the same legal force.)

Certainly the fact that the internal rules are putting central provisions concretely takes them closer to such legal rules as are decrees and orders. However, this circumstance should not lead us to such a reverse conclusion that each legal act putting a central provision concretely, must be legislation act at the same time.

Similar views can be traced in the literature of the other socialist countries. Only for the sake of illustration we can mention that in the Soviet Union Sarkisov calls the local regulation on work performance to be "the joint legislative activity of the enterprise-admimistration and the local organ of trade union, in the course of which the State-level and branch level norms are concretized and detailed in a procedure prescribed by law. In some cases it is also aimed to fill in the gaps of labour law." According to him the local norm possess the most of the criteria of statutory norms: it contains obligatory rules for anyone and its provisions are of general character. Their specific character is considered by the author to be in the fact that their sphere of territorial and personal competence is limited and that one of the acting subjects will be the passive subject of this "legislation" at the same time. (E.g. the workers' collective appears in double role.)[21]

Quite a lot of common characteristics can be found in these views and in Taly's views who were, however, strongly criticized by socialist jurisprudence. Namely, he says that the law created by the internal rules is *an independent kind of the positive law*. Its specific feature is that its sphere of effectiveness confines itself to the framework of the given social organization.[22]

There is no doubt that within the complex world of law there are a lot of transitions and the limits are either effaced or hardly differentiated between the categories, between the positive law and subjective law, the legislation and legal practice, the legal rules and concrete norms. Our terms such as "legal rule", "legal source" do not have an exact, permanently valid definition, in different aspects they acquire different meaning. All the same, this fact should not give a chance for the artificial "relativisation" of the terms in order to fade the existing and readable limits.

In the Marxist legal science it is an unchanged view that the law is the intention of the ruling class, raised to the level of legislation. This thesis is containing that *in the objective sense* could be considered as law only the norms issued by organs entitled to express the intention of the ruling class, i.e. from the organs of the state authorities and public administration, or from other state organs authorized to legislate.

Consequently the creation of the internal rules of the enterprise is not law and legislation – neither those of "labour"-character, nor those of "organizational"-character.

It is a frequent argumentation that state enterprises, though not legislature organs, have acquired legislative competence, within the framework and limits set by law, by the authorization from state legislature to create regulations (collective agreement, regulation on structure and operation).[23] Therefore behind them stands the *legislator's power and intention*,

what is needed to be for the recognition of any norm as statutory act. Indeed, the legislator stands behind the regulating enterprises, but is not identical with them. László Román elaborates in his paper on the internal regulations that we have to recognize the difference between the expression of the will of the ruling class and the expression of a will, that is *in accordance* with the intention of the ruling class.

I share also the opinion that the obligation or authorization of the enterprises (or other organs) to create internal rules *does not mean the delegation of the legislative competence of the state.* It means, quite the contrary, that the given life-condition or group of conditions remain outside of the regulation by the State. In the designed framework the legislator did not intend to bind the behaviour of the subjects by further law regulations. Therefore the partners do excercise their rights given by law or fulfill their duties, when settling up further rules of conduct for themselves within the bounds left by law for action, i.e. they put concretely the rights and duties provided by objective law.[24]

Consequently the legal act for setting up the internal rules of the enterprise is not legislation, it is legal practice.[25] Therefore, the difference, mentioned by László Nagy, between the rules based on the Enterprise Act and Labour Code, i.e. that the former "authorizes only for legal practice, but cannot create new rights and duties", we cannot evaluate as real difference, considering that both types of rules can only concretize, in different extent and framework but in basic type similarly, the rights and duties already established by law.

Then the internal rules are not legal sources? In the generally accepted stricter meaning of the word they are, really, not. But in a wider sense, in which we consider even a contract to be a legal source, they are also legal sources. (We cannot be blamed that we accept the "false ways" of Kelsen by this statement, because we make conscious, specific distinction between the substantive law created by the State, and the subjective law practiced by the partners.) When recognizing their "legal source" character we cannot ignore that the base of their obligatory nature is primarily of contractual character: it depends on the labour contract established with the individual employees.

We can proceed to the next main argument of the representatives of the view bringing the internal rules close to the law: it is the compulsory power of the state provided for these regulation's observance. But this is nothing more like the enforcement that ensures the performance of duties and the assessment of the rights originated from the legal relations, established basing upon the law provisions.

According to the earlier quoted view[26] there is an important difference between the labour law and non-labour (organizational) regulations within the enterprise. That is while for the latter the single base to enforce them is only the manager's right of direction, the assertion of the labour rules is supported by the possibility of the available means of state-enforcement.

As far as I am concerned I do not see any substantial difference between the possibilities of enforcement, because I think that the *assertion inside the enterprise* is ensured by the directive right of the manager in both groups of rules. Even in the cases of such rights that are provided by the collective agreement and therefore could be taken on judicial proceedings, the enterprise would not turn to the judicial organs. (E.g. for securing the fixed term of notice or even for forcing the employee to do some overwork, that is not beyond the limit set by the collective agreement.) In both cases the enforcement will be done only by using the directive power and disciplinary rights of the director. It is another question that if the employee does not agree with the measures or sanctions inflicted by the enterprise executives, he is entitled to turn to the organs established for deciding labour disputes. Consequently the assesment of rules with taking the help of the state power happens only by the employees. At these conditions the only group of provisions in respect of which we cannot see the presence of any legal means or measures to enforce them is the group of provisions of organizational character staying outside the conractual relation between the employee and employer. Namely if the independence or autonomy of some internal unit or organ, given by the organizational and operational regulation of the enterprise, is injured by the director or other management executive the given unit (i.e. the workers' collective of the unit or the person who is charge of this operation) has no possibility to turn to any organ with competence to settle the given dispute. (Labour court, that is appointed to decide the labour disputes is available only for *individual* employees as subjects of the individual employment relation.) The lack of legal measures and forums does not appear, therefore, in addition to the direction power of the director, but *against it*. And this does not shaw a notable difference between the two types of rules (of organizational and labour character) but does show the existing legal gap in the valid statutory law.

The necessary elimination of this gap could be, perhaps, associated with a general settlement of the legal way of collective disputes. This latter is claimed more times in the professional literature but there is no statutory solution elaborated up to the present. All the same, we have to use strongly "conditional mood" when speaking about the general settlement because the disputes concerned are arised from different types of clashes of interests. Therefore it is doubtful and must be investigated whether they can be solved in identical procedure. In the so-called "collective disputes" the clashes of interests between employees and the employer are in the foreground. But when the dispute takes place about the observation of the internal *organizational* rules, it is arisen between the different parts (units) of the organization, all of them serving the unity and integral organizational targets.

The single point where a denotation can be made between the internal regulation according to their branch classification is, according to my opinion, the here mentioned difference between the affected social relations and interests.

In László Román's views the creation of any internal regulation is nothing else than the exercising of employer's rights considering that in some form or other the content of every provision becomes the duty of the employees. At the same time he also admits that the organizational and operational regulation serves mainly the interests of the employer, the collective agreement serves mainly the interests of the employee.[27]

Although this statement is doubtless, I would formulate it more properly: the collective agreement involves the interest ot the employees, the organizational regulation *does not affect* the employees' interests. Surely, some provision can involve the interest of one of the partners only if it affects the interest of the other. Followingly we could not speak about provisions involving the interest solely of the "employer." If it regulates in the sphere of *employer-employee relation*, i.e. it affects the rights and duties belonging to the partners as employees or employer, it will affect the interest of the employees too. The provisions of enterprise's regulation on organization and operation (or most of them) does not affect directly the relation between the employee and employer, i.e. they can be considered neutral as far as the safeguarding of employees' interests are concerned.

Since in my view the function of labour law is mainly the protection of the employees' interest amidst the circumstances of the employment relation prevailed by the power of employer, therefore we should regard internal rules to be of labour law character just if they appear in the relation of employee-employer, with a content of safeguarding of employees' interests. Otherwise we will have to consider as rules of labour law character even those indifferent in the respect of employees' interests. And followingly we would have come to the wrong conclusion that "the whole life inside the enterprise is of labour law character" since in the last analysis everything, what happens inside the enterprise, is in connection with the work perfomance of somebody of employees.

Finally we have to deal with the last argument of the view claiming the close relationship between internal regulations and statutory law. This is the following: the internal rules have regulative, normativ character like statutory provisions. About this statement already several researchers has proved that is oversimplified and consequently wrong. They have demonstrated, mainly in connection with the researches on the legal nature of collective agreement – that the normative character is not only a feature of statutory provisions, moreover, even an individual contract between two persons can have normative elements. Therefore this point need not detain us.[28]

V. The contractual character of the regulations

Several levels and kinds of regulations can be found at enterprises. We may reckon as the two most important ones the organizational and operational regulation and the collective agreement. These two regulation virtually embody the two kinds of provisions presented above, those of labour and organizational character.

The collective agreement inevitably contains provisions affecting (and safeguarding) the employees' interests, moreover, involves those of basic importance. This explains the specific process of its creation, its legal form, namely that it is created by the agreement between the director and the enterprise comittee or council of trade union representing the workers' collective of the enterprise. The draft must be discussed with the employees before signing.[29]

This fact prompted Tamás Sárközy to divide the internal regulations in two opposite groups. These are: the regulation of organization and operation or the organizational rules in general on one hand and the agreement-norms on the other. "It is quite an other type of legal relations when a legal act issued by one of the internal organs needs the approval of another organ (its consent or not to raise a veto) against when two internal organ takes on mutually obligations, even if the sociological literature put them together under the title of "bargain".[30]

Really, it is not the same that a legal act is formulated by one decisive intention and relating to this intention the other one is of supplementary and "extern" character or both of them are equal and regarded as "intern" in the respect of the given act. All the same I cannot agree completely with Tamás Sárközy's point of view because he contrasts on the ground between "agreements" and "other regulations" in the respect of their legal nature, legal substance. There above mentioned difference results *only the difference of the legal form*, but behind the different legal forms we have to see the same legal substance: both of them are *regulations*, i.e. norms or groups of norms arranging the internal order of an organization.

Now we are arriving to a much disputed problem: the relation between "substance" and "form" in connection with the notion of regulation.

László Román criticizes those theoreticians who formulate the question as "contract or law", when determining the legal character of collective agreement. He says that this way we compare non-identical legal qualities. The contract is a legal form, but it is a substantial problem whether something contains rules and provisions, I think that the way of putting the question should not be condemned on this ground because it is also the question of form that some provision is shaped as act, order, decree – in a word: statutory law. Even László Román himself writes: statutory rule it is the source of law in the formal meaning of the word.[31] I agree with Mrs. Hágelmayer who writes: "Both statutory rule and contract – are forms presenting some kind of substance"[32] therefore the fault of the above mentioned way of putting the question is not that it compares different legal qualities, but it is that causes the choice of answeres to become narrower. In other words it excludes every kind of third quality, moreover it answeres only the form, but does not give an answer to the question of substance, namely that the collective agreement and the other internal normative measures constitute a common category: they all are *regulations*.

László Román states: "The regulation as a term etymologically belongs to the genus of rules; the regulation is a specific kind of acts with normative content. According to our view the term "regulation" is fitting for those

normative acts which refer to the internal operation of the organizations. It serves the more or less comprehensive, durable settlement of the internal *order* (or some element of the internal order) and it is frequently used in the meaning of rules of order ("statutum", "reglement").[33]

On the contrary Mrs. Ida Hágelmayer, though regarding the collective agreement also to be a "special form of regulation", emphasizes that the term of "regulation" is used to denote the *form*, namely to mark the form of general acts with specific legal nature yet under discussions.[34]

But this way we repeatedly evade the answer to the problem of legal nature. And, in addition, this statement is contradicted by the fact that regulations (i.e. provisions on internal operation of some organ), as far as their content is concerned, may appear in *various legal forms*. E.g. the regulations of organization and operation of the county-, city- and district-councils appear as council's decrees.[35] But regulation may appear in the form of unilateral managerial direction, i.e. as employer's direction and, according to my view, it may finally appear as agreement, i.e. in the form of contract too.

Contract and regulation – they are in the position of substance and form in abstracto. However, it is yet questionable whether they can get into the position of substance and form in concreto? Whether regulational content can appear in contractual form? This question is, actually, answered in the negative by the majority of labour law experts although there are authors (primarily representativess of other branches of law) who regard the contemporary Hungarian collective agreement to be a real contract. It seems that at the same time they do separate it from the other, unilateral type of internal regulations. This is done, for example, by Tamás Sárközy in his above quoted statement, but the same separation is hinted by his "de lege ferenda" proposition. Namely, that the collective agreement should be regulated in Labour Code as more real contract, created to equalize the different interests inside the enterprise and as such "specific contract" it should include the other regulations that could be transformed into the form of agreement.[36]

A contrary opinion most sharply formulated can be found at László Román: "...regulation and contract – fire and water, they are irreconcilable contrasts."[37]

László Roman find this contrast to be existing despite the fact, that he strongly separates the general term of contract from its civil law version. He notes that the term of contract cannot be connected with the term of ware-relationships, not even historically, because the term of contract was known already before the ware-producing societies. (For example he refers to the compact scaled with blood.)

We can find the definition of the term of contract in the university textbook of Hungarian civil law. It is definited in more steps. First it is quite general and acceptable even for us here: "The contract is a unanimous expression of their will by two or more persons, bringing about legal effect. Legally free wills are expressed by the partners and by this

means they make their wills to be mutually binded in accordance with the content of the contract."[38]

The latter features, however, characterize only the civil law contract, although the textbook regards them generally as characteristics of the term of contract. Such features are: the quid-pro-quo status and the equivalence in value between the given services, the economic constraint standing behind the legally free wills. All these features appear as consequences of the contractual substance that "the contract is form, the change of goods is substance and the latter determines the former."[39]

The substance of every contract would be the change of goods? No, our answer is "not". We have to recognize here, how it is when a general category of law (here: "contract") is identified with one of its special forms appearing in a given branch of law (here: the civil law) just because historically its legal dogmatics primarily had developed in the given branch of law. We can meet similar phenomenon in connection with the term of "legal subject": the legal science identified it for a long time with it equivalent in the civil law. Therefore the view that starts to establish a more general term of legal subject can make way very hardly.

It is recognized even by the science of civil law that the contract as form can be detached from its content and can become the form of such agreements which contains no change of goods and therefore there is no question about the equivalence of values. From the aspect of civil law we should, however, consider it just as an exception.

Beside the civil law we can find the institution of "contract" in constitutional law, international law, public administration law, labour law and co-operative law too. The change of goods cannot be considered as typical content of contract in these branches of law. Here we have to regard as contractual substance the mutual undertaking, or, in wider sense, when the formerly free wills are made binded voluntarily and mutually. But this must be more than mutual obligation merely to keep and apply certain provisions – states László Román. To undertake something towards another person – this is the "contract" in the most abstract sense of the word, he says.[40] Well, this way we are getting back near to the substance of "change of goods" as contract-substance, even if we do not want to do so. But when we are really able to detache from the classical notion of contract, we have to accept as "mutual obligation" if *both of the partners take on merely to observe certain rules.*

This is – and no more – the typical content of the international law agreements too, especially of those counted as legal sources. (The science of international law distinguishes between two kinds of international agreements: those called legal sources on one hand and those of administrative type on the other.)[41]

The internal regulations created by agreement also have the same content of obligation. As a final conclusion it could be stated that the internal rules at state enterprises are legal acts belonging to the sphere of legal practice and they may be classified actually into the traditional legal categories.

A part of them, concerning to the organization and operation of the enterprise, has no direct effect to the rights and duties originating from employment relation, therefore they are neutral provisions as far as the protection of interests is concerned. Their importance increases nowadays when an increasing role is obtained by the smaller units in production-organizing, in stimulating the increase of productivity of production and the legal guarantees of the smaller units' independence are laid down in the regulations of this kind. The rules in this group appear as unilateral acts of the enterprise director but this does not mean that they become the domain of the directors' free will. They are created partly jointly with the managing bodies of the company, partly with the participation of the forums of enterprise democracy (with their approval, by asking their opinion etc.). The content of the regulations must be formulated or changed only in the legally settled way. Conseqently the director is not allowed to put the rules aside unilaterally.

The other great part of the internal regulations consists of the rules concerning directly the employment relationship, so having importance primarily in respect of the protection of workers' interests. They appear in the form of contract or agreement.

It is a further task to make clear how is the relation (differences and common characteristics) between the mutually created acts called "agreement" (increased lately in both socialist and capitalist countries) on the one hand and the classical notion of "contract" on the other. The common substance they have is that they contain bargaining between the parties having controversial interests and their fixed consentment. This character does not appear sharply in the settlement created at the socialist state enterprises considering the final basic common interests of the empolyer and employees. However, my opinion is that the bargaining character of these settlements must be increased, i.e. making available the widest channels for expressing the direct clash of interests and promoting their reconciliation this way.

FOOTNOTES

[1] See: *Gyula Eörsi:* The basic problems of the socialist civil law. Book publishers of "Akadémiai Kiadó", Budapest, 1965. 210. p.

[2] See first of all: *László Román:* Legal nature of the organizational type of internal regulations with special regard to the collective agreement. Studia Iuridica Auctoritate Universitatis Pécs Publicata. No. 67. Pécs, 1970. (Further on abbreviated as: "Internal Regulations"); *László Román:* The fundamental problems of the employer's right to give instructions. Book Publishers of „Akadémiai Kiadó, "Budapest, 1972. pp. 163 – 205. (Further on abbreviated as: "Right to give instructions"); *László Nagy:* The system and practice of collective agreements. Táncsics Book Publishers. Budapest, 1976. pp. 7 – 17.; *Mrs. Ida Hágelmayer:* Basic questions of the collective agreement. Book Publishers of „Akadémiai Kiadó", Budapest, 1977. pp. 310 – 342. (Further on abbreviated as: "Collective agreement").

[3] *László Nagy:* Basic problems of the co-operative law. Book Publisher of "Akadémiai Kiadó", Budapest. 1977. p. 278.

[4] *Tamás Sárközy:* To the legal scientific bases of the socialist theory of enterprise. Book Publishers: "Gazdasági és Jogi Kiadó", Budapest, 1981, pp. 19 – 31. (Further on abbreviated as: "Enterprise theory".)

[5] *Tamás Sárközy:* Legal regulation on the organizational and operational relations inside the enterprise. Periodical: "Állam és Jogtudomány" 1980. (No. 4. p. 577. (Further on abbreviated as: "Organizational and operational relations".)

[6] See the speech by Prime Minister György Lázár at the XII. Congress of the HSWP. See: Periodical "Közgazdasági Szemle", 1980) No. 4. p. 528.

[7] *Tamás Sárközy:* Organizational and operational relations. p. 577.

[8] *András Sajó:* Theoretical questions related to the legal regulation of the internal mechanism of state enterprises. See: in the Volume "Enterprisal management and the legal status of the enterprises." Book Publishers: "Közgazdasági és Jogi Kiadó", Budapest, 1978. pp. 187–189.

[9] Act No. VI. of 1977. § 13. (1) and (2).

[10] See: *Gyula Eörsi:* Law, Economy, Division of Legal System. Book Publishers "Akadémiai Kiadó". Budapest, 1977. pp. 133–134.

[11] *Tamás Sárközy:* Organizational and operational relations. p. 597.

[12] *László Román:* Internal regulation. p. 597.

[13] *László Román:* Labour Law. Faculty Textbook. (Part.) Publisher of Textbooks "Tankönyvkiadó", Budapest, 1979. p. 25.

[14] Earlier *László Nagy* considered as such social norm the enterprise regulation on "veteran employees", which is, since the modification of Labour Code in 1980, considered by him to be "a transition between the social rules and the other decisions issued by the enterprise director". – since the director and the union creates it jointly. *László Nagy:* The system of labour law rules. Paper on codification. (Manuscript.) 1982. p. 31. (Further on abbreviated as: "Codification paper").

[15] *R. I. Kondratiev:* Sochetanie centralizovannogo i lokalnogo pravovogo regulirovaniya trudovyh otnosenii. (The connection of the central and local regulation on labour relations.) Izdatelsztvo Lvovskogo Gossudarstvennogo Universiteta. Lvov. 1977. p. 16.

[16] *O. V. Smirnov:* Vnutreny trudovoy rasporyadok. (The internal work order of the enterprise) Izdatelstvo Leningradskogo Universiteta. Leningrad, 1980. p. 32.

[17] *Allan Flanders:* Industrial relations: What is Wrong with the System? (Faber & Faber, 1975. p. 10.) Quoted by Derek Torrington & John Chapman: Personnel Management, (Prentice Hall International, 1979, London) p. 27.

[18] *László Nagy:* Codification paper. 41–43. p.

[19] *László Nagy:* Codification paper. p. 24.

[20] *Mrs. Ida Hagelmayer:* Collective agreement. p. 333–343.

[20/a] *Tamás Sárközy:* op. cit. p. 594.

[21] *Sarkisov:* Socialnoe planirovanie razvitiya trudovogo kollektiva i lokalnoe regulirovaniyeh truda na proizvodstvennyh predprijatiyah. (Social planning of the development of workers' collectives and the local regulation of work at the producing enterprises and co-operatives.) In the volume: Uchastiye trudovyh kollektivah v upravlennii proizvodstvom. (The participation of workers' collectives in the enterprise management.) p. 107.

[22] According to O. V. Smirnov this statement hides the substance that exists behind the law. We should agree with him on that. See: Smirnov: ibid. p. 132.

[23] *Mrs. Ida Hágelmayer:* The collective agreement. p. 341–343.; *László Nagy:* Codification paper. p. 29.; *Tamás Sárközy:* Internal organization and operation. p. 579.

[24] In the Soviet literature Kondratiev calls attention to the difference between the norms of concretisation and those of differentiation. Kondratiev: ibid. p. 43.

[25] *László Román:* Internal regulations. p. 24.

[26] See: footnote Nr. 18.

[27] *László Román:* Internal regulations. p. 8.

[28] e. g. *László Román:* Internal regulations p. 30.; *András Sajó:* Ibid. p. 192.

[29] Labour Code ; 13. (1) and Decree of the Minister of Labour Affairs 20/1979. (XII. 1.) MüM § 4. (2)

[30] *Tamás Sárközy:* Internal organisation and operation. p. 578.

[31] *László Román:* Internal regulations. p. 23.

[32] *Mrs. Ida Hágelmayer:* Collective agreement. p. 331.

[33] *László Román:* Internal regulations. p. 3.

[34] *Mrs. Ida Hágelmayer:* Ibid. p. 318–319. and p. 342.

[35] Act Nr. 1. of 1971 on the Coucils, ; 28. (1)

[36] *Tamás Sárközy:* Codification paper to the modification of Labour Code. (Manuscript.) 1978. p. 28.

[37] *László Román:* Right to give instructions. p. 174.

[38] *Gyula Eörsi:* Law of obligations. General Part. Uniform textbook for university faculties of Law. Publisher of Textbooks. Budapest, 1978. p. 21.

[39] Ibid. p. 21.

[40] *László Román:* The internal regulations p. 11.

[41] *Buza – Hajdu:* Textbook of International Law. Publisher of Textbooks (Tankönyvkiadó), Budapest, 1965.

EINIGE MIT DEN INNEREN STATUTEN DES UNTERNEHMENS ZUSAMMENHÄNGENDE THEORETISCHE FRAGEN

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(Zusammenfassung)

Der erste Teil Abhandlung stellt die Frage, ob das Recht und die rechtliche Regelung überhaupt Platz innerhalb der Unternehmen haben. Die Antwort darauf ist bejahend, weil die Erhöhung der Selbständigkeit des Unternehmens, die Verwirklichung der selbständigen Verrechnung der inneren Einheiten, die immer komplizierter werdenden inneren Verhaltnisse die Garantierung der Wirkungskreise, Rechte und Verpflichtungen durch Rechtsmittel beanspruchen.

Im folgenden Teil beschäftigt sich die Studie mit der Diskussion in der Fachliteratur, ob die einzelnen inneren Statuten zum Arbeitsrecht, bzw. zu einen anderen Rechtszweig gehören. Die Verfasserin schließt sich der Anschauung an, nach der man innerhalb der Organisation zwischen den dem Interessenschutz dienenden arbeitsrechtlichen Normen und denen, die sich nicht auf das Arbeitsverhältnis zwischen zwei Personen beziehen, einen Unterschied machen muß. Die letzteren nennt man rechtliche oder unternehmensrechtliche Normen.

Viele Verfasser behaupten, daß das eine oder andere Statut einem den Rechtsregeln nahe stehenden Charakter hat, weil es in der Zukunft zu befolgende Normen enthält und so, das für die Rechtsregeln charakteristische hypothetische Element in ihnen zu finden ist, weiterhin darum, weil sie auf Grund gesetzlicher Verfügungen erlassen wurden. Die Abhandlung diskutiert mit diesen Anschauungen und erörtert, daß die inneren Statuten nicht zum Gebiet der Rechtsschaffung, sondern zur Rechtsanwendung gehören. Im Zusammenhang mit der Form der Statuten hält sie prinzipiell im Gegensatz zum heute herrschenden arbeitsrechtlichen Standpunkt die Form der Vereinbarung, oder des Vertrages, als Methode des Zustandekommens der einzelnen Statuten für richtig.

НЕКОТОРЫЕ ТЕОРЕТИЧЕСКИЕ ВОПРОСЫ ВНУЕРЕННЕГО УСАТВА ПРЕДПРИЯТИ'

ЛЕХОЦКИНЕ КОЛЛОНАИ ЧИЛЛА

В данной работе сначала ставится вопрос имеет ли вообще место внутри предприятия право, правовое регулирвоание. Ответ на этот вопрос положительный, так как повышение самостоятельности предприятий, осуществление хозрасчета во внутренних единицах, усложнившиеся внутренние отношения требуют гарантии соблюдения компетенций, прав и обязанностей, посредством правовых средств.

Следующая часть работы посвящена дискуссии в специлитературе в связи с тем, входят ли отдельные внутренние нормы в трудовое право или в другую отрасль права. Автор присоединяется к тому мнению, согласно которому внутри организации не-

обходимо различать нормы трудового права, касающиеся защиты интересов трудящихся от норм, касающихся неколлективных трудовых отношений. Последние нормы называются организационными, правовыми нормами или же правовыми нормами предприятия.

Многие авторы придают тому или иному уставу характер, приближающий его к правовым нормам по той причине, что он содержит соблюдаемые в будущем нормы, т.е. в них можно найти гипотетический элемент, характерный для правовых норм, а далее еще и потому, что они были изданы путем законодательского распоряжения. Автор данной работы вступает в спор с этими взглядами и излагает, что внутренние уставы относятся *не к области правотворчества, а к области применения права.* В связи с формой уставов автор в качестве способа создания отдельных уставов считает принципиально правильной контрактную форму по сравнению с действительным положением трудового права.